IN THE COURT OF APPEALS OF IOWA

No. 7-590 / 06-1389
Filed November 29, 2007

ROBIN FAUGHT and MARY FAUGHT,
Plaintiffs-Appellants,

vs.

CLEAR LAKE SANITARY DISTRICT,
Defendant-Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, Paul W. Riffel, Judge.

Property owners appeal from a district court summary judgment ruling dismissing their appeal from resolutions passed by the board of trustees of a sanitary district annexing their property into the sanitary district and ordering them to connect to the district's sewer system. **AFFIRMED.**

James M. Stanton of Stanton & Sorensen, Clear Lake, for appellants.

Ivan T. Webber of Ahlers & Cooney, P.C., Des Moines, for appellee.

Heard by Huitink, P.J., and Miller and Eisenhauer, JJ.

MILLER, J.

Robin and Mary Faught appeal from a district court summary judgment ruling dismissing their appeal under Iowa Code sections 358.23 and 468.83 (2005) from resolutions passed by the board of trustees of the Clear Lake Sanitary District (district) annexing a portion of their real estate into the sanitary district and ordering them to connect to the district's sewer system. We affirm the judgment of the district court.

I. BACKGROUND FACTS AND PROCEEDINGS.

The summary judgment record reveals the following undisputed facts. The Faughts own farmland in Cerro Gordo County, Iowa, near the south shore of Clear Lake. The Faughts' property is also located near a parcel of land owned by the district. Neither the land owned by the Faughts nor the land owned by the district was within the limits of the sanitary district. Pursuant to Iowa Code section 358.16, the district petitioned its board of trustees to have the land it owned, in addition to the north four hundred feet of the Faughts' property and the north four hundred feet of another parcel of land,[1] annexed to the district. On September 13, 2005, the board of trustees passed a resolution approving annexation of the land described in the petition.

The district attempted to notify the Faughts of the annexation by certified mail on September 14, 2005, but the letter was mailed to the wrong address. The Faughts were personally served with notice of the annexation on September 27, 2005. The district also published notice of the annexation in a local newspaper in November 2005.

[1] The owner of this parcel of land is not a party to this appeal.

Along with the notice of the annexation, the district informed the Faughts that "[a]s a result of the annexation the board of trustees requires all structures constructed on your property with sanitary drains to be connected to the [district's] sanitary sewer system." At the time of the annexation, the Faughts were in the process of building a new home on the north four hundred feet of their property. They had previously applied for a permit from the Cerro Gordo County Department of Public Health to install an onsite wastewater treatment system. The department of public health denied the Faughts' permit request on October 20, 2005, due to the annexation. The Faughts appealed the department's decision to the Cerro Gordo County Board of Health, which approved issuance of the permit subject to "the ability of the District to compel connection to the sewage system." The department of health consequently issued the onsite wastewater treatment system permit to the Faughts on December 2, 2005. But on January 29, 2005, the sanitary district's board of trustees passed another resolution ordering the Faughts to connect to the district's sewer system.

The Faughts filed a notice of appeal in district court on January 31, 2006, pursuant to Iowa Code sections 358.23 and 468.83. Their petition in support of the appeal challenged the annexation of their property and the district's order requiring them to connect to the district's sewer system. They sought damages for the district's allegedly tortious interference with "the construction of [their] new home."

The district filed a motion for summary judgment, arguing it was entitled to judgment as a matter of law because its actions were authorized by Iowa Code

section 358.16. The district court rejected the Faughts' arguments in resistance to the district's motion and entered summary judgment in favor of the district. [2]

The Faughts appeal. They claim section 358.16 violates the due process clauses of the United States and Iowa Constitutions because it allows annexation of property without notice. They further claim the district "was not entitled to include property owned by it in reaching the '25% of persons who seek the benefit of [the district's] services.'" Finally, they claim the district did not have jurisdiction to compel the connection of their private wastewater system to the district's sewer system.

II. SCOPE AND STANDARDS OF REVIEW.

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.4; *Faeth v. State Farm Mut. Auto. Ins. Co.*, 707 N.W.2d 328, 331 (Iowa 2005). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Grinnell Mut. Reins. Co. v. Jungling*, 654 N.W.2d 530, 535 (Iowa 2002). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Grinnell Mut. Reins.*, 654 N.W.2d at 535. No fact question arises if the only conflict concerns legal consequences flowing from undisputed facts. *Id.* We review

[2] In support of its summary judgment motion the district also argued, as it does on appeal, that the district court did not have jurisdiction of the Faughts' appeal from the district's resolution annexing their property because the appeal was not timely under section 468.84. The Faughts, however, assert that Chapter 468 allows them to collaterally attack allegedly void proceedings. *See Voogd v. Joint Drainage Dist. No. 3-11*, 188 N.W.2d 387, 390 (Iowa 1971). We need not and do not address this issue due to our conclusion that the district court was correct in granting summary judgment in favor of the district, thereby dismissing the Faughts' appeal.

constitutional claims de novo. *Ames Rental Prop. Ass'n v. City of Ames*, 736 N.W.2d 255, 258 (Iowa 2007).

III. MERITS.

"The law of annexation is purely statutory." *Pruss v. Cedar Rapids/Hiawatha Annexation Special Local Comm.*, 687 N.W.2d 275, 279 (Iowa 2004); *see also Anderson v. City Dev. Bd.*, 631 N.W.2d 671, 676 (Iowa 2001) ("Annexation law is governed by statute. . . ."). "[L]egislation establishing the method by which municipal corporate boundaries may be extended is to be liberally construed in favor of the public." *City of Des Moines v. City Dev. Bd.*, 473 N.W.2d 197, 200 (Iowa 1991).

Iowa Code section 358.16 provides that the board of trustees of a sanitary district

> may upon such petition of property owners representing at least twenty-five percent of the valuation of property not included within the district as constituted which seeks benefit from the operation of such sanitary district, include such property and the area involved within the limits of such sanitary district, and such added areas shall be subject to the same taxation as other portions of the district.

Section 358.16 does not require the district, its board of trustees, or the property owners seeking annexation to provide notice to the property owners affected by the annexation prior to annexation. The Faughts thus contend the statute violates their federal and state due process rights. We reject the Faughts' argument because it is well settled that "a failure to provide for a notice and hearing on the question of annexation does not render the statute

unconstitutional."[3] *Wertz v. City of Ottumwa*, 201 Iowa 947, 951, 208 N.W. 511, 513 (1926); *accord City of Cedar Rapids v. Cox*, 250 Iowa 457, 461, 93 N.W.2d 216, 218 (1959); *Mason City v. Aeling*, 209 N.W.2d 8, 10 (Iowa 1973).

"The United States Supreme Court has stated that municipal boundaries may be altered without the consent of the inhabitants of the territory affected and 'nothing' in the Federal Constitution is to the contrary." *City of Monticello v. Adams*, 200 N.W.2d 522, 524 (Iowa 1972) (citing *Hunter v. City of Pittsburgh*, 207 U.S. 161, 179, 28 S. Ct. 40, 47, 52 L. Ed. 151, 159 (1907)). "Although the inhabitants and property owners may suffer inconvenience, there is nothing in the Federal Constitution which protects them from these injurious consequences." *Anderson*, 631 N.W.2d at 676 (citation omitted). Our supreme court has thus held that the legislature's "failure to provide for any notice and hearing on the question of annexation of territory to a municipality does not deprive owners of their property without due process of law." *Cox*, 250 Iowa at 461, 93 N.W.2d at 218. We therefore find the annexation procedure set forth in section 358.16 does not violate the Faughts' due process rights. We decline their request that we overrule this fixed precedent.[4] *See Stuart v. Pilgrim*, 247 Iowa 709, 713, 74

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[3] Although we agree with the Faughts that the constitutionality of section 358.16 has never been examined, we believe our cases regarding the annexation of property to a municipality to be equally applicable to the situation presented by this case.

[4] We find the decisions of the United States Supreme Court, such as *Mullane v. Cent. Hanover Bank & Trust*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950), that the Faughts refer us to in support of their argument urging us to overrule our precedent in light of "modern U.S. Supreme Court due process principles" to be inapposite to the facts presented by this case. *See, e.g., Mullane*, 339 U.S. at 307, 70 S. Ct. at 654, 94 L. Ed. At 869-70 (establishing "the constitutional sufficiency of notice to beneficiaries on judicial settlement of accounts by the trustee of a common trust fund"). We also reject the Faughts' argument that section 358.16 is subject to the stricter constitutional scrutiny applied to voting rights cases because "annexation proceedings are sufficiently similar to voting." *See, e.g., Adams*, 200 N.W.2d at 524 (rejecting the argument that the annexation statute was "constitutionally infirm because it did not permit voting by the

N.W.2d 212, 215 (1956) ("It is of the greatest importance that the law should be settled.").

The Faughts next argue the district "was not entitled to include property owned by it in reaching the '25% of persons who seek the benefit of [the district's] services.'" In support of their argument, they rely on a Colorado Supreme Court case that interpreted the language of a Colorado annexation statute to prohibit the inclusion of "streets and public ways in the area . . . in calculating the area to be annexed." *City & County of Denver v. Holmes*, 400 P.2d 901, 904 (Colo. 1965). We believe the district court was correct in finding the reasoning of the court in *Holmes* and the facts presented by that case are inapplicable to this matter.[5]

The language of our statute is clear and unambiguous. As previously set forth, section 358.16 allows "property owners representing at least twenty-five percent of the valuation of property which seeks benefit from the operation of such sanitary district" to petition the district to "include such property . . . within the limits" of the district. It is undisputed that the district owned property representing at least twenty-five percent of the value of the property within the area to be annexed. The statute makes no distinction between public and private

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voters of the territory to be annexed" under the same due process analysis applied in other annexation cases).

[5] Neither *Holmes* nor *Heller v. City Council of the City of Seal Beach*, 321 P.2d 97 (Cal. 1958), which the Faughts also cite in support of their argument, involve a situation where the sanitary district is the property owner petitioning for annexation into the district. However, other state courts confronted with issues similar to that presented herein have confirmed that a city owning property within an area that it seeks to annex qualifies as an "owner" entitled to sign an annexation petition. *See, e.g., Town of Fond du Lac v. City of Fond du Lac*, 126 N.W.2d 201, 205 (Wis. 1964) (noting the court's previous holding that "a city is an owner within the meaning of [the relevant statute] and may sign a petition for direct annexation of territory to itself").

owners of land. Where a "statute's language is clear and unambiguous, we apply a plain and rational meaning consistent with the subject matter of the statute." *Birchansky Real Estate, L.C. v. Iowa Dep't of Pub. Health*, 737 N.W.2d 134, 139 (Iowa 2007). We therefore conclude the district court did not err in finding the district, "as owner of 25 percent of the property to be benefitted by the annexation, is allowed by statute to petition for annexation."

Finally, we turn to the Faughts' argument that the district did not have jurisdiction to order them to connect to the district's sewer system.[6] Iowa Code section 137.7(4) provides that a county board of health "[m]ay issue . . . permits . . . in relation to the . . . construction or operation of private water supplies or sewage disposal facilities." Thus, the district agrees with the Faughts that the Cerro Gordo County Board of Health initially "had jurisdiction over the Faughts' treatment system." However, the district argues the county board of health was divested of its jurisdiction after the Faughts' property was annexed to the sanitary district. We agree.

Section 358.16 provides that the board of trustees of the sanitary district "may require connection to the sanitary sewer system established, maintained, or operated by the district from any adjacent property within the district." A local county ordinance governing on-site wastewater treatment systems acknowledged the authority of the district to compel property owners within the district to connect to the public sewer system.[7] Although the Cerro Gordo

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[6] We reject the district's error preservation argument as to this issue because our review of the district court's summary judgment ruling reveals the issue was both raised and decided by the district court. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2005).
[7] Cerro Gordo County Ordinance #27A, chapter 2.5(01) states, "No on-site wastewater treatment and disposal system shall be installed . . . where a public sanitary sewer

County Board of Health issued a permit to the Faughts "for an onsite waste water treatment system," the board specifically stated it had no "intent to affect the ability of the Clear Lake Sanitary District . . . to compel connection to the sewage treatment system." We therefore find the district court did not err in dismissing the Faughts' appeal from the district's resolution requiring them to connect to the district's sewer system.

IV. CONCLUSION.

We conclude the annexation procedure set forth in section 358.16 does not violate the Faughts' due process rights despite the fact that it does not provide for notice to affected property owners prior to annexation. We further conclude the district court did not err in finding the sanitary district was entitled as a property owner to petition for annexation under section 358.16. Finally, the district court did not err in finding that section 358.16 allowed the district to compel the Faughts to connect to the public sewer system upon annexation of their property into the sanitary district. Summary judgment was properly granted in favor of the district. We therefore affirm the judgment of the district court.

AFFIRMED.

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system is reasonably accessible . . . unless an exception is granted by the Board of Health. . . ."